

tional consent, customary law of the sea. With or without successful implementation of the treaty, radical changes from early twentieth century law of the sea regimes have become general principles of international law.

International law now recognizes a twelve-mile territorial sea, exclusive economic zones, and internationally sanctioned development of the deep sea bed. The law of the sea has slowly evolved from Grotius' free use regime to a modified Seldonian regime. Without the treaty, the continued appropriation of vast areas of the sea by individual coastal nations could and arguably would occur if it were not for the customary regime of international development of the sea bed. It is clear that these unilateral extensions have been greeted with majority support of the nations of the world, making such extension the new customary norm.

## THE INSTITUTIONAL FRAMEWORK OF INTER-AMERICAN RELATIONS

HENRY WELLS\*

Inter-American relations involve not only numerous bilateral interactions between the individual countries of the Western Hemisphere, but also interactions of most of the countries within the regional arrangement known as the Inter-American System. The first task of this Article is to explain what the Inter-American System is and how it has evolved. The second is to describe the institutional framework of the system as provided by two of its components: the Inter-American Treaty of Reciprocal Assistance, commonly known as the Rio Treaty, and the Organization of American States (OAS). Then follows a discussion of recent attempts to change the character of both the Rio Treaty and the OAS which, though unsuccessful so far, may have jeopardized the future existence of the Inter-American System. This Article concludes with some reflections on the future of United States relations with the other nations within the Hemisphere, particularly the Latin American countries.

### I. THE INTER-AMERICAN SYSTEM

The Inter-American System began to take shape on October 1, 1889. At the invitation of the United States government, representatives of all but one of the then-existing eighteen Latin American nations assembled in Washington, D.C., to inaugurate the first International Conference of American States.<sup>1</sup> The most significant

\* Professor of Political Science and Department Chairman, University of Pennsylvania.

1. The Latin American nations represented at the First International Conference of American States were the following: Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Paraguay, Peru, Uruguay, and Venezuela. Missing was the Dominican Republic, which did not send a delegation to Washington "because the United States had not ratified a treaty of arbitration and commercial reciprocity signed in 1884." In 1892 the Dominican Republic joined the new International Union of American Republics (see below), and in 1901 it sent a delegation to the Second Conference, held in Mexico City. Cuba and Panama joined upon becoming independent States in 1902 and 1903, respectively. All twenty Latin American States were represented at the Third Conference, held in Rio de Janeiro in 1906. See G. CONNELL-SMITH, *THE INTER-AMERICAN SYSTEM* 41, 45 (1966). See also INTER-AMERICAN INSTITUTE

accomplishment of the Conference was undoubtedly its establishment of two institutions: the International Union of American Republics whose purpose was to ensure "the prompt collection and distribution of commercial information,"<sup>2</sup> and the Commercial Bureau of the American Republics (located by the Conference in Washington, D.C.), which was to serve as the International Union's agency for collecting and disseminating international trade information under the supervision of the United States Secretary of State.

Although these institutions have undergone significant changes in name, structure and function since 1890, they both remain in existence today. The International Union never became truly institutionalized, though periodic meetings of the International Conference of American States kept its name alive until 1948. The Ninth Conference, which met that year in Bogotá, tacitly abolished the inchoate International Union when it established the Organization of American States. Earlier conferences changed the Commercial Bureau's name several times and steadily increased its functions. The Second Conference, which met in 1901, designated the agency as the International Bureau of the American Republics; the Fourth Conference, meeting in 1910, changed its name to Pan American Union. Since 1967, the agency has been known as the General Secretariat of the OAS.

It would be a mistake to draw the conclusion from the foregoing that the Inter-American System is simply a set of institutions. Though it does include institutions (of which the OAS and its General Secretariat are familiar examples), the System is much more complex than that. Also included within it are important treaties, agreements, conventions and other diplomatic instruments. Needless to say, the System also embraces the countries identified by its institutions and instruments as member States.<sup>3</sup> Finally, the Sys-

OF INTERNATIONAL LEGAL STUDIES, *THE INTER-AMERICAN SYSTEM* at xii (1966) [hereinafter cited as *INTER-AMERICAN SYSTEM*].

2. *International Conference of American States, 1889-1928* (Washington: Pan American Union, 1931), quoted in C. FENWICK, *THE ORGANIZATION OF AMERICAN STATES* 36 (1963).

3. The Inter-American System now includes twenty-nine nations: the United States, nineteen Latin American countries, eight small Caribbean States (all of them former British Colonies, including Antigua/Barbuda which the OAS admitted to membership on December 11, 1981), and Suriname (the former Dutch Guiana). Not included are Canada, which has always held itself rather self-consciously apart; Cuba, whose government the OAS expelled from the system in 1962; Guyana, part of whose territory is claimed by Venezuela; and Belize, all of whose territory is claimed by Guatemala. According to the Act of Washington,

tem includes numerous informal understandings and relationships, some of which make the actual behavior of member States and their representatives quite different from what one would expect upon examining the charters of the System's institutions, or texts of its treaties and resolutions.

The most significant of these informal understandings undoubtedly has been the widespread recognition of the System as essentially a relationship between the United States and the rest of the member States. The most striking aspect of the relationship is its asymmetry. The power and wealth of the United States greatly exceed the power and wealth of the other member States. Such disparity has indeed given the Inter-American System its main reason for existence: to provide mechanisms for reconciling the often discordant interests of "the One and the Many," thus nurturing their uneasy coexistence.

It would be difficult to measure the differences in power and wealth between the United States and the other member States of the Inter-American System. The disparity in wealth may be suggested, however, by the quota system adopted by the OAS Council in 1960 for determining the contribution to be made by member States each fiscal year to the Regular Fund (that part of the budget from which most OAS programs and services are financed). Based on the principle of ability to pay, the quotas for fiscal year 1961 ranged from 66 percent of the Regular Fund contributed by the United States to 0.3 percent contributed by each of the seven countries then judged least able to pay: Bolivia, Costa Rica, Haiti, Honduras, Nicaragua, Panama, and Paraguay. Presently, the United States is still underwriting 66 percent of the Regular Fund, whereas Grenada and the other minuscule new member States contribute only 0.03 percent each.<sup>4</sup>

The disparity in power between the United States and other member States is even less amenable to measurement than the wealth disparity. An indication of the manner in which many

adopted by the First Special Inter-American Conference on December 18, 1964, and to Article 8 of the OAS Charter as amended in 1967, no State "whose territory became subject, in whole or in part, prior to December 18, 1964 . . . to litigation or claim between an extracontinental country and one or more Member States of the Organization" is eligible to be considered for membership in the OAS "until the dispute has been ended by some peaceful procedure." Venezuela had laid claim to part of British Guiana and Guatemala to all of British Honduras long before 1964. See M. MARGARET BALL, *THE OAS IN TRANSITION* 69-72 (1969).

4. *Id.* at 297-305. See also 11 OAS CHRON., July 1976, at 8. See also 2 OAS DEV. NEWSLETTER, Jan. 1979, at 2.

Latin Americans perceive the disparity may, however, be inferred from the terms they have sometimes used to describe the relationship: the cat and the mice; the wolf and the lambs; the elephant and the ants; the shark and the sardines.

Although the relationship has been asymmetrical in important respects, United States interests have not always been different from those of the other member States. On many issues, the position taken by all or a large majority of member States has been the same as that of the United States. Issues on which the United States and some or all of the other member States have differed have often been resolved in a spirit of cooperation and mutual concession. The fact remains, however, that since 1889 some important objectives sought by the United States, both in and through the Inter-American System, have been quite different from those sought by other member States. This is not to say that their respective goals have remained constant over time. As the following review of their relations indicates, new situations have tended to alter policy orientations in both the United States and the other countries.

## II. THE EVOLUTION OF UNITED STATES-LATIN AMERICAN RELATIONS

United States relations with Latin America have passed through four major stages since 1889. The first stage began on October 1, 1889, when the first International Conference of American States was convened. Lasting until 1933, this was a period in which the United States was unabashedly domineering in its relations with the Latin American States. The Latin Americans, needless to say, were unhappy with their subordinate role from the beginning, and became more so as the period advanced. The second stage, which ran from 1933 to 1947, was an era of remarkably harmonious Inter-American relations. This can be attributed mainly to the Good Neighbor Policy of President Franklin Delano Roosevelt and the Roosevelt Administration's observance of the nonintervention principle long championed by the Latin American States. The third stage covered the postwar years between 1947 and 1967. This period began with all of the nations within the Hemisphere reaffirming their commitment to nonintervention and working together to create new regional institutions. The period ended, however, with the United States and Latin American countries pursuing increasingly divergent interests. The fourth stage, which began in 1967 and still continues, marks the rise of a spirit of independence,

self-confidence and, at times, even solidarity on the part of the Latin American States in dealings with the United States. Conversely, this period marks the decline of United States influence within the Hemisphere.

This Article is primarily concerned with the ideas and institutions that came to the fore during the third and fourth stages of the United States-Latin American relations. The following discussion focuses principally on those aspects of the first and second stages that significantly influenced the subsequent development of the Inter-American System.

### A. The First Stage: 1889-1933

In 1889, the major policy objective of the United States Government in its dealings with Latin America was the promotion of United States business interests, particularly the export of manufactured goods to Latin American countries. By 1903, however, the promotion of United States security interests had become an even more important objective of United States policy toward the Hemisphere. The overriding policy objective of the Latin American States was to restrain the United States from intervening in their affairs and thereby dominating their political and economic life. Throughout this period, Latin America sought unsuccessfully to get the United States to recognize nonintervention as a binding principle of international behavior within the Hemisphere.

The differing objectives of the United States and Latin America derived from underlying conflicts of interest. During this period, the United States government claimed the right of diplomatic and even military intervention on behalf of United States citizens who were doing business or living in Latin American countries. In addition, the United States demanded greater protections and privileges for these individuals and their property than the countries' governments provided for their own nationals. The United States, like other powerful nations of that time, deemed itself entitled to make such demands on the grounds that international law, as it was then interpreted, required all countries to conform to certain international minimum standards in their treatment of the nationals of other countries.

Most Latin American leaders rejected that argument and supported the Calvo Doctrine instead. The doctrine denied that sovereign States had any obligation to treat foreigners more favorably than their own citizens or to apply to them any standard other than

the host country's national law. At the first International Conference, all except one Latin American State voted in favor of a declaration based on the Calvo Doctrine. The United States voted against it and succeeded in preventing any such proposition from being considered at the next five Conferences.<sup>5</sup>

One consequence of the Spanish-American War was that the United States became generally recognized as a world power; another result was that certain influential American leaders felt that the United States should become an imperial power as well. A proponent of this latter view was Theodore Roosevelt, during whose presidency the United States concluded treaties with Cuba and Panama which established protectorates over those countries. The Cuban protectorate lasted from 1903 until 1934 and the Panamanian from 1903 until 1936. Under the terms of those treaties, the United States government intervened in both countries on numerous occasions for a variety of purposes. It was President Roosevelt who (as he later put it) "took the Isthmus" in 1903. The true story of the United States acquisition of the Panama Canal Zone is practically unknown to present-day Americans. Many Americans are amazed when they learn of the extent of diplomatic and military shenanigans that the United States resorted to back in 1903 in order to make certain that: (1) the Province of Panama rebelled successfully against the Republic of Colombia; (2) the new Republic of Panama gained instant diplomatic recognition; and, (3) a French citizen acting in the name of Panama two weeks after its recognition, without adequate authority to do so, entered into a treaty with the United States which was highly favorable to United States interests. The treaty provided for, among other things, the bisecting of the new nation by a canal zone within which the United States was authorized to act "in perpetuity . . . [as] if it were the sovereign of the territory."<sup>6</sup> Many Latin Americans know of this story. To them it is just one of many examples of imperialism by the United States.

Other examples derived from the Roosevelt Corollary, the policy which President Roosevelt enunciated in a message to Congress in December, 1904. The corollary asserted that the United States

government had the right to exercise "an international police power" in any Latin American country that was unable to "keep order and pay its obligations."<sup>7</sup> The main purpose of the corollary was to justify United States intervention in the debt-ridden Caribbean and Central American countries as a means of preventing them from becoming subject to armed attack or other pressures from European States seeking to collect debts owed to their nationals. It was feared in Washington that such interventions by European governments would lead to the use of the debtor-States as bases from which Europe could challenge the United States control of the Panama Canal and undermine United States dominance in the Caribbean region. National security interests thus became an increasingly important determinant of United States policy toward Latin America.

Policy makers in the Roosevelt, Taft, and Wilson Administrations used the corollary to justify a wide variety of diplomatic and military interventions in Caribbean and Central American countries. The interventions began in 1905 when the United States took over the collection of customs duties in the Dominican Republic and began to disburse the proceeds to the Dominican government and its creditors in accordance with a fixed schedule. In 1911, the United States extended the customs-receivership system to Nicaragua, and in 1915 to Haiti.<sup>8</sup>

Other forms of intervention included the nonrecognition of new governments that came into power by force (a policy begun by President Wilson in 1913), the supervision of elections and the use or threat of military invasion. The Taft Administration set a precedent in 1910 by landing United States armed forces in Nicaragua "to help protect life and property," and again in 1912 to help suppress a rebellion against a government that the United States supported. Except for a period of eleven months in 1925-1926, the United States Marines and other military forces remained in Nicaragua from 1912 until 1933. The Wilson Administration intervened militarily in Mexico, Haiti, and the Dominican Republic. The invasions of Mexico in 1913, 1914 and 1916 were brief, but the

5. See M. MARGARET BALL, *supra* note 3, at 48-50; G. CONNELL SMITH, *supra* note 1, at 41-44. See also S. F. BEMIS, *THE LATIN AMERICAN POLICY OF THE UNITED STATES* 226-241 (1967).

6. See D. McCULLOUGH, *THE PATH BETWEEN SEAS* 329-402 (1977). See also W. LAFFEBER, *THE PANAMA CANAL* 19-46 (1978).

7. *THE EVOLUTION OF OUR LATIN-AMERICAN POLICY: A DOCUMENTARY RECORD* 362 (James W. Gantenbein ed. 1950). See S. F. BEMIS, *supra* note 5, at 142-67. See also D. MUNRO, *INTERVENTION AND DOLLAR DIPLOMACY IN THE CARIBBEAN, 1900-1921*, at 65-111 (1964).

8. Between 1909 and 1912 the Taft Administration tried unsuccessfully to establish customs receiverships in Costa Rica, Guatemala, Haiti, and Honduras. See D. MUNRO, *supra* note 7, at 217-68.

military occupation of Haiti which began in 1916 lasted until 1934. The occupation of the Dominican Republic, which also began in 1916, lasted until 1924. In that year, the country became subject to the provisions of a treaty establishing a United States protectorate which did not expire until 1941.<sup>9</sup>

The many instances of United States interference in the affairs of Latin American nations between 1889 and 1933 explain why the principle of nonintervention became the cardinal doctrine of all Latin Americans in their dealings with the United States, and indeed with one another. By the end of the period it had become, in the eyes of Latin Americans, "the cornerstone of the Inter-American System."<sup>10</sup> But the United States, against which it was mainly directed, had yet to recognize the principle and act accordingly.

#### B. The Second Stage: 1933-1947

The second period began in 1933 with the announcement of the Good Neighbor Policy by Franklin Delano Roosevelt. The President had been in office only nine months when his government accepted, with minor reservations, the principle of nonintervention as a binding policy in the conduct of the United States relations with the rest of the Hemisphere. At the Seventh International Conference of American States held in Montevideo in December, 1933, the United States joined the Latin American countries in voting to approve the Convention on Rights and Duties of States. Article 8 of the Convention read, "No state has the right to intervene in the internal or external affairs of another." In signing the treaty, the United States delegation appended a reservation retaining all rights under "the law of nations as generally recognized and accepted."<sup>11</sup> It is not clear what the delegation had in mind by adding this reservation; but it did not matter, for in December, 1936, at the Special Inter-American Conference for the Maintenance of Peace held in Buenos Aires, the United States officially endorsed the principle of nonintervention without any reservations.

This change in United States policy had a significant effect on United States-Latin American relations. The period from 1933 to approximately 1943 is still remembered with great euphoria by

many Latin Americans. This was an era of good relations, unlike the long preceding period which was often marked by mutual suspicions and hostilities. The heyday of the Good Neighbor Policy, by contrast, was characterized by mutual help and support. The United States seems to have made a special effort to avoid actions which Latin Americans might construe as coercive, humiliating or inconsiderate.

#### C. The Third Stage: 1947-1967

The beginning of the third stage in United States-Latin American relations coincided with the onset of the Cold War, which informed United States attitudes and policies throughout the period. The two principal instruments of the Inter-American System, the Rio Treaty of 1947 and the OAS Charter of 1948, owed their formation largely to the Cold War. United States policy makers came to the conclusion that a mutual defense pact embracing the United States and Latin American nations would provide needed protection against Soviet expansionism, and that a strong regional organization of the Western Hemisphere would serve as a countervailing force against the Soviet bloc in the United Nations and other contexts. The Latin American States, it should be noted, were much less worried about the Soviet threat; but they welcomed the Rio Treaty and the OAS Charter as instruments for containing American power.

Both instruments unequivocally endorsed the principle of nonintervention, and were in due course ratified by the original twenty-one member States. Ratification was tantamount to a solemn commitment on the part of each State not to intervene in the internal or external affairs of any other State. During the 1950s, interventions by one State in the affairs of another did occur, especially in Central America and the Caribbean. For the most part, however, such interventions involved local rather than cold war issues; therefore, they could be brought to an end fairly easily by timely application of OAS peace keeping procedures.<sup>12</sup> During the 1960s, however, the Cold War became a more disturbing factor in Inter-American

9. The customs receiverships were not withdrawn from the Dominican Republic until 1940, from Haiti until 1941, and from Nicaragua until 1944. See S. F. BEMIS, *supra* note 5, at 174-84, 189-93, 210-13.

10. G. CONNELL-SMITH, *supra* note 1, at 9.

11. S. F. BEMIS, *supra* note 5, at 273-74.

12. A conspicuous exception was the United States-backed overthrow of the government of President Jacobo Arbenz Guzmán of Guatemala in 1954. The machinery of both the OAS and the United Nations proved to be ineffective in resolving this issue. See generally R. SCHNEIDER, *COMMUNISM IN GUATEMALA, 1944-1954* (1959); S. SCHLESINGER & S. KINZER, *BITTER FRUIT: THE UNTOLD STORY OF THE AMERICAN COUP IN GUATEMALA* (1982). For the broader context see J. SLATER, *THE OAS AND UNITED STATES FOREIGN POLICY* (1967).

relations, especially with respect to the policies and activities of both Cuba and the United States.

A new element within Inter-American relations was Cuba's rapid forging of close ties with the Soviet Union and other Communist regimes following the negotiation of the first Cuban-Soviet trade agreement in February, 1960. Cuba's relations with the United States rapidly worsened and were officially severed on January 3, 1961, during the last days of the Eisenhower Administration. The succeeding Kennedy Administration responded to this diplomatic crisis in three ways. The first was to carry through the plans formulated under President Eisenhower for organizing an invasion of the island by armed Cuban exiles—a decision that not only resulted in the Bay of Pigs disaster, but also represented a flagrant violation of the United States commitment to nonintervention under the Rio Treaty and the OAS Charter. The second was to arm and train Latin American military establishments for counterinsurgency warfare in order to meet an expected wave of Cuban-sponsored attempts at internal subversion. The third was to sponsor economic and social development in Latin America through the Alliance for Progress. Under this program, the United States and Latin American countries were meant to cooperate by bringing "a better life to all the peoples of the Continent" through introducing "profound economic, social, and cultural changes."<sup>13</sup>

By 1967, the end of the third period, the Johnson Administration was merely paying lip service to the reform goals of the Alliance. The Administration was using the Alliance as a vehicle for: (1) promoting the interests of vocal sectors within the United States business community; (2) helping the United States government reduce its balance of payments deficits; and, (3) shoring up the finances of the Brazilian government and other authoritarian regimes that the Administration regarded as specially deserving of assistance because of their strong support for United States-sponsored cold war policies.

This shift in the United States government's economic assistance policies in the mid-sixties and its military intervention in the Dominican Republic in 1965<sup>14</sup> aroused a good deal of resentment

13. Declaration and Charter of Punta del Este as cited in INTER-AMERICAN SYSTEM, *supra* note 1, at 443-44 app. 18.

14. On April 28, 1965, President Johnson ordered the landing of United States Marines and other forces (ultimately more than 20,000 troops) in the Dominican Republic, not only to protect the evacuation of Americans endangered by the civil war then going on, but also to prevent radical elements from winning that struggle and turning the country into "another

in Latin America. Between November, 1965, and February, 1967 (when the member States of the OAS were meeting to amend the OAS Charter), this resentment manifested itself in certain Latin American policy initiatives with which the United States sharply disagreed. As will be seen below, the key issues debated in the special Inter-American Conferences and other meetings which lead to the Charter amendments of 1967 have not yet been resolved.

#### D. The Fourth Stage: 1967 to the Present

The present period in the evolution of United States-Latin American relations is one in which security concerns have remained very high on the United States agenda. The United States government seemed to regard the death of Che Guevara in 1967 as symbolic of the failure of the Castro regime to foment revolution in Latin America, and reason enough to concentrate its anti-communist energies on prosecuting the war in Vietnam. After the conclusion of that conflict, the Nixon and Ford Administrations pursued a policy of benign neglect (referred to by critics as malign neglect) toward Latin America. The Carter Administration followed a similar course until 1978 when the rise of a strong anti-Somoza movement in Nicaragua caused United States policy makers to focus once again on the threat of communism in the Hemisphere. Since 1981, the Reagan Administration has shown a strong tendency to return to Cold War policies and practices in its dealings with the Hemisphere, especially in Central America and the Caribbean.

The Latin American governments, meanwhile, have continued to assign top priority to problems of economic and social development and to regard as exaggerated, if not irrelevant, the United States government's fears concerning the spread of communism. During the mid-seventies (as in the Charter revision period of 1965-1967), many Latin American governments sought to commit the United States by treaty to providing economic assistance to under-

Cuba." On May 6, 1965, after a long and bitter debate in a plenary session of the Tenth Meeting of Foreign Ministers, the United States Ambassador to the OAS was able to push through a motion establishing an Inter-American Peace Force. Since the Peace Force was to consist almost entirely of the United States troops in Santo Domingo, that OAS action had the effect of officially legitimizing the United States intervention and of appearing to multilateralize the United States program for bringing an end to the civil war. It also had the effect of revealing to many Latin Americans how completely the United States dominated the OAS. See M. MARGARET BALL, *supra* note 3, at 471-72. See also A. LOWENTHAL, THE DOMINICAN INTERVENTION (1972); J. SLATER, INTERVENTION AND NEGOTIATION: THE UNITED STATES AND THE DOMINICAN REVOLUTION (1970).

developed member States. During the late seventies, the Latin American States (including Cuba) established the Latin American Economic System (SELA) as a vehicle for cooperating on economic and social development projects and for defending themselves against "economic aggression" by the United States, other developed countries, and multinational corporations. Efforts by Latin American States to make further revisions in the OAS Charter and amend the Rio Treaty in accordance with these ideas came to nothing. As will be seen in more detail below, the Latin American initiatives failed because the United States made clear its refusal to be bound by any such new provisions.

### III. THE PRINCIPAL INSTITUTIONS OF THE INTER-AMERICAN SYSTEM

The Inter-American Conference on Problems of War and Peace, better known as the Chapultepec Conference, was held in Mexico City in February and March, 1945. Two resolutions among the many adopted at the Conference were of prime significance for the institutionalization of the Inter-American System. One was Resolution VIII, the so-called Act of Chapultepec, which contained a provision that called for the drafting and adoption of a collective security treaty—one that would create a hemispheric defense system based on reciprocal assistance in the event of aggression against an American State by any non-American State, or by another American State. The other was Resolution IX, which called for the reorganization and strengthening of the Inter-American System and charged the Governing Board of the Pan American Union with the task of preparing a draft charter for consideration by the then-forthcoming Ninth International Conference of American States.

At that time the United States supported regionalism rather reluctantly, but by 1947, it had become considerably more favorably disposed toward both a regional defense pact and a regional organization. This change of policy occurred mainly as a consequence of the deterioration of United States-Soviet relations which began during the San Francisco Conference of April through June, 1945.<sup>15</sup> As noted above, the advent of the Cold War contributed greatly to United States support for the drafting and adoption of the Rio Treaty of 1947 and the OAS Charter of 1948.

#### A. The Rio Treaty

The Inter-American Treaty of Reciprocal Assistance was formulated by a special Inter-American Conference for the Maintenance of Continental Peace and Security which met in Petropolis, Brazil, during the last two weeks of August, 1947. The treaty was signed at Brazil's Ministry of Foreign Affairs in Rio de Janeiro on September 2, 1947. The United States and all Latin American States except Ecuador and Nicaragua participated in the negotiation and signing of the treaty. By December 3, 1947, two thirds of the signatory States had ratified the treaty, which thereafter applied them with full force and effect. The treaty was eventually ratified by the other signatories.

The Rio Treaty was the first collective security treaty to be drafted in accordance with the inherent right of collective self-defense as recognized by Article 51 of the United Nations Charter. It was also the first regional security treaty to be formulated since Article 52 of the United Nations Charter came into effect, which permitted "the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action."<sup>16</sup>

Articles 3 and 6 of the Rio Treaty as adopted in 1947 were especially significant. The first sentence of Article 3 read as follows:

The high Contracting Parties agree that an armed attack by any State against an American State shall be considered as an attack against all the American States, and consequently each one of the said Contracting Parties undertakes to assist in meeting the attack in the exercise of the inherent right of the individual or collective self-defense recognized by Article 51 of the Charter of the United Nations.<sup>17</sup>

Although States were authorized to take whatever immediate action they deemed advisable in meeting an armed attack, the "Organ of Consultation of the Inter-American System" was enjoined to meet without delay and decide what "measures of a collective character" should be taken.

Article 6 extended the principle of collective security to States that were victims of aggression other than armed attack. It reads as follows:

16. *Id.* at 65, 76-77.

17. Inter-American Treaty of Reciprocal Assistance, Sept. 2, 1947, art. 3, 62 Stat. 1681, T.I.A.S. No. 1838, 21 U.N.T.S. 77.

15. See M. ETZIONI, THE MAJORITY OF ONE 55-56, 107-09 (1970).

If the inviolability or the integrity of the territory or the sovereignty or political independence of any American State should be affected by an aggression which is not an armed attack or by an extra-continental or intra-continental conflict, or by any other fact or situation that might endanger the peace of America, the Organ of Consultation shall meet immediately in order to agree upon the measures which must be taken in case of aggression or, in any case, the measures which should be taken for the common defense and for the maintenance of the peace and security of the Continent.<sup>18</sup>

The significance of this article is that it required the Organ of Consultation to meet and decide what actions were required whenever any "fact or situation that might endanger the peace of America" came to its attention.

Article 11 provided that the meetings of Ministers of Foreign Affairs should carry out the consultations referred to above. In 1938, at Lima, the Eighth Conference decided that meetings of the foreign ministers of the American republics (including the United States Secretary of State) would be the best vehicle for consultation among those States in case of war or other emergency. The Conference also conceived of the foreign ministers meeting together as a convenient device for addressing any other issue that the governments of the System deemed important enough to justify top-level consultation. The Meeting of Consultation of Ministers of Foreign Affairs was therefore established as a body that would convene in times of crisis to decide what should be done. The first three Meetings of Consultation were held during World War II, each for the purpose of dealing with urgent war-related problems.<sup>19</sup> Aware of the usefulness of these meetings, the framers of the Rio Treaty of 1947 continued the arrangement, with the result that the Meeting of Consultation of Foreign Ministers became the Organ of Consultation under the treaty.

#### B. The Organization of American States

The Ninth Conference convened in Bogotá on March 30, 1948,

18. *Id.* at art. 6.

19. The First Meeting of Consultation of Foreign Ministers was held in Panama City in September 1939 to deal with anticipated problems stemming from the outbreak of war in Europe. The Second was held in Havana in July 1940 to consider ways of keeping Germany out of the French colonies in the Caribbean after the fall of France, and other matters. The Third was held in Rio de Janeiro in January 1942 to take up the hemispheric consequences of Pearl Harbor and the entry of the United States into World War II. See M. MARGARET BALL, *supra* note 3, at 17-21, 134-41.

and lasted five weeks. Among those in attendance were General George C. Marshall, then Secretary of State, who headed the United States delegation and remained at the Conference for four weeks. In addition, all twenty Latin American States sent delegations. When the conference adjourned on May 2, 1948, it had approved five treaties or agreements, and a Final Act consisting of forty-six resolutions and recommendations.<sup>20</sup> From the standpoint of the institutionalization of the Inter-American System, the Charter of the Organization of American States was by far the most important of the treaties.

1. *Purposes of the OAS.* The "essential purposes" of the OAS as perceived by its founders were set forth as follows in Article 4 of the Charter of 1948:

- (a) To strengthen the peace and security of the continent;
- (b) To prevent possible causes of difficulties and to insure the pacific settlement of disputes that may arise among the Member States;
- (c) To provide for common action on the part of those States in the event of aggression;
- (d) To seek the solution of political, juridical, and economic problems that may arise among them; and
- (e) To promote, by cooperative action, their economic, social, and cultural development.<sup>21</sup>

The first three of these clauses concerned "peace and security": strengthening them, preventing their disruption, and restoring them by collective action in the event of aggression. Even the fourth clause implied a concern for peace and security in that it recognized political, juridical, and economic problems among member States (not within them) as matters for which the OAS should seek solutions. Only the fifth clause focused on matters not necessarily related to peace and security. This clause emphasized the promotion of economic, social, and cultural development.

During the early stages of the Ninth Conference, two days of violent rioting on the part of Bogotá's numerous poor all but paralyzed the downtown section of the city where the conference was

20. See G. CONNELL-SMITH, *supra* note 1, at 196-97.

21. Charter of the Organization of American States, Apr. 30, 1948, 2 U.S.T. 2394, T.I.A.S. No. 2361, 119 U.N.T.S. 3. The extensively revised version of the Charter adopted in 1967 retained intact wording of section 4 but renumbered it section 2. See Protocol of Amendment to the Charter of the Organization of American States, Feb. 27, 1967, art. II, 21 U.S.T. 607, T.I.A.S. No. 6847.



taking place.<sup>22</sup> If many delegates drew from those events the lesson that extensive economic and social reforms were necessary to prevent such upheavals throughout Latin America and thereby counter the spread of communism, little evidence of that line of thought could be found in the text of the Charter of 1948. It gave little attention to methods of achieving economic, social, and cultural development, but left them loosely defined. Moreover, the Charter gave little authority to either of the new organizations it established—the Inter-American Economic and Social Council in Articles 63-66, and the Inter-American Cultural Council in Articles 73-77. In any event, the Charter made those organs subordinate to the OAS Council in Article 57, a much more powerful and prestigious body.

2. *Major Institutions.* As with the statement of purposes, the main institutions that the 1948 Charter provided for were those responsible for ensuring collective security and the pacific settlement of disputes. Article 33 designated the Inter-American Conference, a new name for the old International Conference of American States, as the "supreme organ" of the OAS. Unlike the International Conferences which had met at irregular intervals (only nine times between 1889 and 1948), the new plenary body was to meet every five years. In reality, however, it met only once—in 1954, when what was referred to as the Tenth Conference took place in Caracas.

The Meeting of Consultation of Ministers of Foreign Affairs, which was the second major institution set forth in the 1948 Charter, was of greater importance. Article 39 declared that its purpose was "to consider problems of an urgent nature and of common interest to the American States, and to serve as the Organ of Consultation." Between 1948 and 1967, it was convened three times as the Organ of Consultation under the Rio Treaty, and six times for the purpose of considering urgent problems of common interest.<sup>23</sup>

22. The rioting began on April 9, 1948, in protest against the assassination of Jorge Eliécer Gaitán, charismatic leader of the populist wing of Colombia's Liberal Party. The uprising (or *bogotazo*, as it came to be called) was a terrifying experience for the delegates, for it was an explosion that occurred under their very noses. The National Palace, churches, and more than 150 other public and private buildings were seriously damaged, pillaged, and in some cases destroyed by fire, and several thousand people were killed. At the time, the *bogotazo* was widely believed to have been Communist-inspired. See J. MARTZ, COLOMBIA: A CONTEMPORARY POLITICAL SURVEY 173-245 (1962).

23. See M. MARGARET BALL, *supra* note 3, at 133-70.

The third major institution provided for by the 1948 Charter, the Council of the OAS, was of still greater importance. The Charter placed the Council in Washington, D.C., where it was to serve as a permanent agency. It consisted of one representative with the rank of Ambassador from each member State, appointed by its government. The Charter assigned to the Council a variety of important coordinating, supervisory, and budgetary functions. It also called upon the Council to take cognizance of any matter referred to it by the Inter-American Conference or by any Meeting of Consultation of Foreign Ministers.

Article 40 of the 1948 Charter gave the Council an important role in convening the Meeting of Consultation: any member State could request that the Council call such a meeting, but the Council did not have to do so unless an absolute majority of its members approved the request. According to Article 43 and, by inclusion of the Rio Treaty, Article 25, the Council itself or its chairman had to call a Meeting of Consultation immediately in the case of: (1) an armed attack on any American State; (2) an act of aggression other than an armed attack; or, (3) "any other fact or situation that might endanger the peace of America." Article 52 authorized the Council to serve as the provisional Organ of Consultation during the period between the calling of the Meeting of Consultation and the actual convening of the foreign ministers in that capacity. Since the Council determined when the Meeting of Consultation was to convene, it sometimes set the date far enough in advance to allow itself to serve several days as the provisional Organ of Consultation; more often, however, it called a Meeting of Consultation but postponed announcing a date and place so that it could act provisionally as the Organ of Consultation long enough to settle the dispute in question.<sup>24</sup>

The fourth major institution that the 1948 Charter included in the new organization was the Pan American Union, which had been in existence under that name since 1910. Located in Washington, it had served as the headquarters and secretariat of the gradu-

24. *Id.* at 198-201. See also A.V. THOMAS & A.J. THOMAS, THE ORGANIZATION OF AMERICAN STATES 106 (1963).

It must be emphasized that this interpretation by the Council of its powers is the most important event that has taken place in the field of collective security of the OAS. It often makes the Council the real political executive of the organization, for in most cases presented to it and accepted by it the Council, upon convening provisionally, has called a Meeting, but failed to fix a time and place of meeting. It has then proceeded to settle the dispute and to cancel the Meeting.

ally evolving Inter-American System. Article 78 of the Charter described the Pan American Union as "the central and permanent organ of the Organization of American States," and Articles 82 and 83 enjoined it to perform a wide variety of functions, including the use of its technical and information services to "promote economic, social, juridical and cultural relations" among the member States under the direction of the Council.

Direction of the Pan American Union was the principal duty of the Secretary General of the Organization; he was also authorized to participate in the deliberations of the OAS Council, the Meetings of Consultation, the Inter-American Conferences, and other OAS organs, but not to vote. Articles 79-81 mandate that once elected by the Council for a ten-year term, he could not be re-elected or succeeded by a person of the same nationality.

The Assistant Secretary General served as advisor and assistant to the Secretary General and also as secretary of the OAS Council. He was also elected by the Council for a ten-year term, but articles 85-86 of the Charter imposed no limitations on either his own re-election or his successor's nationality. The post of Assistant Secretary General was held by two successive United States citizens between 1948 and 1968. Their election to the second highest post in the OAS Administration hierarchy continued a tradition of United States dominance in the Inter-American bureaucracy that had begun in 1890 when the Commercial Bureau of the American Republics was established in Washington with William E. Curtis as Director.<sup>25</sup>

3. *The Charter Amendments of 1967.* During the mid-1960s, as noted above, the Latin American States were becoming increasingly dissatisfied with the United States policies toward the Hemisphere. They were especially critical of the level of economic assistance that the United States government had been providing, the United States violations of the nonintervention provisions of the Rio Treaty and the OAS Charter, and what they regarded as the overly influential role of the United States in the security-ori-

25. Dr. William Manger served as Assistant Secretary General from July 1947 to May 1958. His successor was Dr. William Sanders, who served from May 1958 to May 1968. Manger's predecessor as the top-ranking American citizen in the Pan American Union bureaucracy was Dr. Leo S. Rowe, a former Professor of Political Science at the University of Pennsylvania, who served as Director General of the Pan American Union from 1920 until his death in 1946. See M. MARGARET BALL, *supra* note 3, at 11, 175, 276.

ented OAS Council and in the Pan American Union, both of which were based in Washington.

In November, 1964, the Council responded to such criticisms by convoking a special Inter-American Conference for the purpose of considering "various matters of fundamental importance in strengthening the Inter-American System."<sup>26</sup> Two Conferences, one in Rio de Janeiro in 1965 and the other in Buenos Aires in 1967, resulted from that initiative. The Protocol of Amendment adopted by the Buenos Aires Conference consisted mainly of changes in the structure of the OAS. These changes were intended to accomplish two main purposes: a reduction in the influence of the Council, and a strengthening of the capacity of the OAS to promote economic, social, and cultural development. The emphasis by Latin American States on those objectives in the mid-sixties was reminiscent of the shift in focus that had taken place earlier in the United Nations, from security in the 1950s to economic and social development in the 1960s—the "Development Decade."

The chief beneficiary of the changes in the 1967 Charter was a new institution, the General Assembly, which replaced the moribund Inter-American Conference as the "supreme organ" of the OAS. It received from the Amended Charter not only the same general grant of authority that the 1948 Charter had conferred upon the Conference, but also some important specific powers formerly exercised by the OAS Council. Articles 52-55 of the Amended Charter included the power to adopt the budget and determine the member States' quotas, to elect the Secretary General and the Assistant Secretary General, coordinate the OAS agencies, and to supervise the secretariat. The status of the Council, renamed the Permanent Council, was further reduced by article 68 which identified it as one of three coequal "Councils of the Organization," each "directly responsible to the General Assembly." The other two entities were the Council's formerly subordinate organs, the Inter-American Economic and Social Council (CIES) and the Inter-American Cultural Council—the latter reconstituted as the Inter-American Council for Education, Science, and Culture (CIECC).

It should be noted, however, that the shift of authority from the Council to the General Assembly did not improve the quality of OAS decision making, even from the standpoint of Latin American

26. *Id.* at 32.

critics of the pre-1967 Council. The General Assembly certainly did not live up to its billing as the "supreme organ" of the OAS. Required by the Amended Charter to convene annually, it had crowded agendas; but only rarely did it consider and decide issues of genuine significance for the Americas or for the OAS itself.<sup>27</sup> The General Assembly's annual sessions seldom lasted longer than ten days. The Permanent Council, by contrast, continued to have jurisdiction over political issues, including matters affecting hemispheric peace and security, and on occasion continued to exercise the right to act provisionally as Organ of Consultation under the Rio Treaty. Its members still bore the rank of Ambassador from their respective States, and the Permanent Council itself continued to remain in session year round in Washington, D.C.

Especially disappointing to many Latin Americans was the failure of the 1967 reforms to produce stimulation of economic and social development. Making the CIES directly responsible to the General Assembly did not produce that result—nor did the expansion and upgrading of the Charter provisions, chapters 7 and 8, concerning economic and social standards. In the eyes of an increasing number of Latin Americans, the main deficiency of the Amended Charter was that it did not include a provision that would have made the furnishing of economic assistance to less-developed Latin American States juridically binding upon the United States. The effort to impose such a commitment upon the United States led to the next stage in the structural evolution of the Inter-American System.

#### IV. PROPOSALS FOR RESTRUCTURING THE INTER-AMERICAN SYSTEM

Latin American dissatisfaction with United States-Latin American economic relations increased rapidly in the late sixties and early seventies. Manifestations of this trend included the Consensus of Viña del Mar put forth in 1969, and the Special Commission for Consultation and Negotiation (CECON) established in 1970. The Consensus was a set of demands for change in United

27. *The Times of the Americas* (Washington, D.C.) quoted Jeremiah O'Leary of the *Washington Star* as having described the Second General Assembly as the OAS's "spring futility rite"; other accounts of assembly activities in the early seventies referred to them as "wheel spinning" and "shadow boxing." For the O'Leary quotation, see *TIMES AMERICAS*, May 3, 1972, at 4. See also *TIMES AMERICAS*, Apr. 12, 1972, at 4; *LATIN AMERICA* (London), May 23, 1975, at 156.

States economic policy, which the Special Latin American Coordinating Committee (CECLA)<sup>28</sup> addressed to President Nixon. CECON was organized by the Inter-American Economic and Social Council to serve as a vehicle for dialogue between the United States and other member States on controversial issues before final decisions were made. Latin American sensibilities were outraged in August of 1971, when the United States government bypassed CECON in announcing its general 10 percent trade surcharge. The Latin American States regarded this policy as especially unfair to them in view of the balance of payments deficits they were running in their trade with the United States.

It was in this atmosphere of growing Latin American hostility to United States economic policies that the Third General Assembly voted in April, 1973, to establish a Special Committee (CEESI) to study the Inter-American System and to propose restructuring measures. Composed of representatives appointed by the governments of the OAS member States (many of whom served as their countries' ambassadors to the Permanent Council as well), CEESI held many meetings over the next two years and compiled twenty-seven large volumes of minutes, reports and resolutions.

The only significant change in the Inter-American System to emerge from those labors was a series of amendments to the Rio Treaty. Adopted by a Conference of Plenipotentiaries meeting in San José, Costa Rica on July 16-26, 1975, which the Fifth General Assembly had convoked,<sup>29</sup> the Protocol of Amendment revised and renumbered many of the articles of the 1947 Treaty and added several new ones. The only amendment that the United States government found unacceptable was new article 11, which read as follows: "The High Contracting Parties recognize that, for the maintenance of peace and security in the Hemisphere, collective economic security for the development of the Member States of the Organization of American States must also be guaranteed through suitable mech-

28. CECLA, which consisted of all the Latin American foreign ministers except the Cuban, had been organized in 1963 by the Inter-American Economic and Social Council for the purpose of formulating a common policy position for Latin America prior to the first United Nations Conference on Trade and Development (UNCTAD I), which was scheduled to take place in Geneva the following year. CECLA met for the same purpose in 1967 prior to UNCTAD II and in 1971 prior to UNCTAD III. It also met to agree upon regional positions to be expressed at meetings of other international bodies, including CIES, and on other occasions. See M. MARGARET BALL, *supra* note 3, at 224. See also G. POPE ATKINS, *LATIN AMERICA IN THE POLITICAL SYSTEM* 302-03 (1977).

29. Protocol of Amendment to the Inter-American Treaty of Reciprocal Assistance (Rio Treaty), July 26, 1975, 14 I.L.M. 1122.

This outcome was basically a consequence of the United States government's unyielding opposition to several of the proposed changes—especially to provisions calling for the establishment of “collective economic security” or for the achievement of “integral development.” The inclusion of these terms and others like them in the proposed new chapters on Nature and Purposes (I), Principles (II), Collective Security (VI), Economic Standards (VII), and The

30. *Id.* at 1131.

31. *See* 19 I.L.M. 260 (1980).

32. 11 OAS CHRON., Jan. 1976, at 1-4; 12 OAS CHRON., May 1977, at 2.

## V. CONCLUSION

33. 11 OAS CHRON., Jan. 1976, at 1-2; 11 OAS CHRON., Feb. 1976, at 1-2; 11 OAS CHRON., Apr.-May, 1976, at 4; 11 OAS CHRON., Dec. 1976, at 1-2. In the voting on the same matters before the Council in November 1976, the United States followed the same related policies. The first was a proposed Inter-American Convention on Cooperation for Integral Development; here the United States abstained from voting on three controversial articles. On the other matter, a draft Convention on Collective Economic Security, the United States was the only member State to vote against the proposal: eighteen approved it and three abstained. 11 OAS CHRON., Nov. 1976 at 1; 11 OAS CHRON., Dec. 1976, at 4-6.

34. 11 OAS CHRON. Aug.-Sept. 1976, at 6-8.

35. For thoughtful discussions of the future of the Inter-American System see T.J. Farer, *The Changing Context of Inter-American Relations*, printed in T.J. Farer, *THE FUTURE OF THE INTER-AMERICAN SYSTEM* at xv-xxiii (1979). See also R.J. Bloomfield, *The Inter-American System: Does it have a future?* printed in T.J. Farer, *THE FUTURE OF THE INTER-AMERICAN SYSTEM* 3-19 (1979).

regard the possibility of accomplishing them as more likely within the System than outside it or in its absence.

This is not to say that the present differences between them are superficial. On the contrary, they represent different value orientations that are deep-seeded and have always been difficult to reconcile. The United States continues to be concerned principally with political and strategic considerations, particularly the preservation of United States strategic hegemony in the Caribbean and (as much as possible) in the Hemisphere as a whole. The Latin American countries, on the other hand, have continued to give top priority to their economic and social development. In recent years they have also been preoccupied with what they perceive to be the deleterious effects of American policies on their own economies and societies—especially the economic power exercised by the United States private sector, including United States-based “transnational enterprises,” as they like to call them.

The establishment of the Latin American Economic System (SELA) in 1975, an organization consisting of all the Latin American States, including Cuba and also Guyana, and other States of the English-speaking Caribbean, was a response to that concern. From the beginning, SELA has tried to promote the economic development of the region and formulate a regional position concerning economic relations with the United States.<sup>36</sup> But SELA has had little impact: large States like Brazil and Mexico have continued to favor bilateral rather than regional approaches to economic relations with the United States and other developed countries, whereas the small States of Central and South America and the Caribbean have remained too dependent on United States aid, trade, or tourism to risk identifying themselves with a well-orchestrated regional protest against United States policies outside the framework of the OAS.

It is indeed a unique strength of the OAS that only within its institutions can the Latin American States achieve a degree of unity among themselves and express a common policy vis-à-vis the United States with some hope of having it taken seriously. That is a basic reason why they are unlikely to abandon the Organization or try to expel the United States. From the United States' stand-

point, the OAS provides a corresponding advantage: only within its institutions can the United States find regular opportunities to make a case for its policies with some hope of gaining for them the understanding and support of its Latin American and Caribbean neighbors.

36. The “Panama Declaration” adopted by SELA on December 1, 1981, represents the latest attempt of that organization to formulate a regional position with respect to economic relations with the United States. See *Latin American Economic System: The Panama Meeting*, 28 COMERCIO EXTERIOR DE MEXICO (English ed.), Jan. 1982, at 16-19.